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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 470

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA,
Petitioner,

versus

UNITED GAS PIPE LINE COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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LECOMTE SHREVEPORT LOUISIANA

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Respondent, United Gas Pipe Line Company, is unable to determine the ground on which the Department of Highways seeks to have its petition for certiorari granted. It is impossible for respondent to determine whether petitioner is claiming that the Court below has held unconstitutional a Louisiana statute or whether petitioner is contending that the Court below erroneously construed the statute involved.

What petitioner has done is merely to copy, practically verbatim, the original brief and the brief on rehearing which it filed in the Circuit Court of Appeals. The Circuit Court of Appeals found it unnecessary to pass upon the constitutional question which might have been presented and rested its decision solely on its construction of the applicable Louisiana statute.

The question raised and decided below was whether, under the proper construction of a statutory permit[1] granted by petitioner to respondent, permitting it to lay a pipe line across the highway, respondent could be required to add certain protective facilities to its pipe line rendered necessary by the widening or reclocation of the highway. The portion of the pipe line in question lies completely outside the outer limits of the highway right of way covered by the permit — it lies on a private right of way acquired by respondent prior to the decision of the Department of Highways to widen or relocate its highway.

Thus the District Judge, in his opinion, reported at 153 F. Supp. 698, said:

> "The single question presented by this action may be quickly resolved. It is: May the Louisiana Department of Highways (plaintiff), which granted a permit to United Gas Pipe Line Company (defendant), to construct a pipe line under and across a public highway, whereunder the company was

(1) The relevant portion of the permit and statute under which the permit was granted are quoted in the Department of Highways petition, pages 5, 6, 7 and 8.

> required to bear the expense of any further work upon the pipe line necessitated by changes in the highway, require the company to pay the cost brought about by relocation of the highway over the pipe line, at a point outside of the original highway right-of-way?"

The District Judge, in his decision, used the following language:

> "Defendant freely concedes that, by the terms of the permit, it is responsible for expense involved in necessary readjustment of its facilities because of highway work to be done within the limits of the highway right-of-way, as it existed when the crossing permit was granted; but it insists that, in all right, fairness and reason, there must be a limit to such liability, which, by reasonable construction of the language at issue, should be coterminous with the limits of the original right-of-way boundaries. Otherwise, there would be a wrongful taking of private property for public use without just compensation, in violation of both the State and Federal Constitutions.
>
> "We agree. * * *"

Nevertheless, on appeal to the United States Court of Appeals for the Fifth Circuit, that Court considered the applicable statute involved and the permit issued pursuant thereto and held that the permit could not exceed the requirements of the statute; that the statute does not permit the Department of Highways to require respondent at its expense, to add any protective facilities to its underroad pipe line at a point outside the original highway right of way and for that reason affirmed the judgment

of the District Court. The constitutionality of the statute was not even discussed by the Circuit Court of Appeals—most certainly it was not declared unconstitutional.

CONCLUSION

In view of the vagueness of the petition for certiorari and the fact that it does not present any question which would serve as a basis for granting the same, it should be dismissed.

Respectfully submitted,

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CERTIFICATE

This is to certify that copies of this brief, in opposition have been served upon W. Crosby Pegues, Jr., D. Ross Banister and Elton Huckabay, counsel of record for petitioner, Department of Highways, State of Louisiana, by depositing same in a United States Post Office with first-class postage prepaid, addressed to said counsel at their post office address, Baton Rouge, Louisiana.

This 7 day of November, 1958.

John M. Madison